IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 330 of 2005 (S/B)

Date of decision: 15th December, 2005

A.F.R. (Approved for Reporting)

Not Approved for Reporting

Initials of Judge

Date

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 330 of 2005 (S/B)

Smt. Dr. Suniti Mishra,
W/o Dr. S.K. Mishra,
R/o ¾ Officer Colony,
S.D.M. Compound, Haldwani,
District Nainital. ..... Petitioner

Versus

1. Union of India,
through its Secretary,
Personal Public Grievances and Pensions,
Govt. of India, New Delhi.
2. State of Uttar Pradesh,
Through its principal Secretary,
Re-organisation/Coordination Department,
U.P. Lucknow.
3. State of Uttaranchal,
Through its Principal Secretary,
Re-organisation department,
Uttaranchal, Dehradun.
4. State of Uttaranchal,
Through its Principal Secretary,
Medical and Family Welfare Department,
Dehradun.
5. Secretary, Medical Health,
State of Uttaranchal, Dehradun.
6. Director, Homeopathic Services,
Uttaranchal, Dehradun.
7. Dr. Ashok Verma,
12/707, Indira Nagar, Lucknow. .....Respondents

Mr. S. Dhulia, Senior Advocate assisted by Mr. Ashish Joshi, Advocate for the petitioner
Smt. Anjali Bhargava, Addl. Standing Counsel (Central Govt.).
Mr. S.P.S. Panwar. Addl. Chief Standing Counsel for the State of U.P.
Mr. J.P. Joshi, Addl. Chief Standing Counsel for the State of Uttaranchal.

JUDGMENT

Coram: Hon. Cyriac Joseph, C.J.
Hon. P.C. Pant, J.

CYRIAC JOSEPH, C.J. (oral)

1. The petitioner is a Medical Officer in the Homeopathic Dispensary, Base Hospital, Haldwani. As per Annexure 10 order dated 21.07.2005, the petitioner was relieved from the service of the Government of Uttaranchal, as she had been allocated to the State of Uttar Pradesh. Challenging the said order dated 21.07.2005, the

Petitioner filed Writ Petition No. 174 of 2005 (S/B) which was disposed of by this Court on 09.08.2005, as per Annexure 2 Judgment. In the said judgment, this Court rejected the challenge against the order dated 21.07.2005. However, the Court took the view that the State of Uttar Pradesh and the State of Uttaranchal should consider the representations submitted by the petitioner and Dr. Ashok Verma in the light of a Government Order dated 14.06.2005 produced as Annexure 5 to the said writ petition. As per the said Government Order dated 14.06.2005, the government of India had authorized the successor States to take action on the representation of the employees for adjustment/transfer on mutual agreement. In the said Government Order, it was also clarified that only Department concerned will be competent to take a decision on such adjustment/ transfer of the employees. The petitioner who had been allotted to the State of Uttar Pradesh and Dr. Ashok Verma who been allotted to the State of Uttaranchal had submitted individual and joint representations requesting that they may be permitted to continue where they are by granting the benefit of the above-mentioned Government Order. Therefore, in the above-mentioned judgment dated 09.08.2005, this Court directed the Government of Uttar Pradesh and the Government of Uttaranchal to consider the said representations submitted by the petitioner and Dr. Ashok Verma as expeditiously as possible in the light of the Government Order dated 14.06.2005. It was also directed that the impugned order relieving the petitioner from the service of the Government of Uttaranchal shall be kept in abeyance till a final decision is taken on the representations. Apparently, in compliance with the directions in the said judgment, the Government of Uttaranchal has issued Annexure I order dated 03.12.2005 rejecting the representation of the petitioner and stating that the order dated 21.07.2005 relieving the petitioner from the service of the Government of Uttaranchal will be operative, Aggrieved by the rejection of her representation, the petitioner has filed this writ petition.

2. In the nature of the order we propose to pass, we do not consider it necessary to wait for a counter affidavit by the respondents. We have heard Mr. S. Dhulia, learned senor counsel appearing for the petitioner and Smt. Anjali Bhargava, learned Addl. Standing Counsel (Central Govt.) who accepted notice for respondent No. 1, Mr. S.P.S. Panwar, learned Addl. Chief Standing Counsel for the State of U.P. who accepted notice for respondent No. 2 and Mr. J.P. Joshi, learned Addl. Chief Standing Counsel for the State of Uttaranchal who accepted notice for respondents Nos. 3 to 6 It is not necessary to wait for service of notice on respondent No. 7.

3. The only reason stated in the impugned order for rejecting the representation of the petitioner is that the petitioner has been finally allocated to the State of Uttar Pradesh and therefore, the Government of Uttaranchal cannot take a decision on the request of the petitioner for adjustment/transfer on mutual agreement from one State to another State. In our view, the fifth respondent failed to understand the import of the directions contained in Annexure 2 judgment and to take note of the Government Order dated 14.06.2005 referred to in the judgment. It is clear that the impugned order was passed without proper application of mind and without considering the relevant aspects. For this reason alone, the impugned order is liable to be quashed.

4. In the light of Government Order dated 14.06.2005 issued by the Government of Uttar Pradesh and the policy decision of the government of India referred to in the said Government Order, the State Governments of Uttar Pradesh and Uttaranchal have got power to allow requests for adjustment/transfer on mutual agreement. Therefore, in the light of the direction in the judgment, what was expected of the fifth respondent was to consider the request of the petitioner for adjustment/transfer on mutual agreement and take a decision as to whether Government of Uttaranchal is prepared to grant request to the concurrence of the government of

Uttar Pradesh. If, for any valid and sufficient reason, the government of Uttaranchal was not prepared to grant the request of the petitioner, it was open to the fifth respondent to reject the representation of the petitioner citing such reason. If the government of Uttaranchal was willing to favourably consider the request of the petitioner, the fifth respondent ought to have sought the concurrence of the Government of Uttar Pradesh and if the Government of Uttar Pradesh also conveyed its concurrence, the fifth respondent could have granted the request. If the Government of Uttar Pradesh was not willing to grant the request of the petitioner for any valid reason, it was open to the fifth respondent to reject the request of the petitioner citing the said reason. Instead of flowing the above procedure, the fifth respondent has rejected the representation of the petitioner simply stating that she has been finally allocated to the State of Uttar Pradesh and therefore, the government of Uttaranchal cannot consider her request. In our view, the fifth respondent misconstrued the circumstances and issued the impugned order under a misapprehension that the Government of Uttaranchal has no power to consider the request of the petitioner for mutual transfer. The stand taken by the fifth respondent is wrong in the light of the Government Order dated 14.06.2005 and the policy decision taken by the Government of India referred to in the said government Order.

5. In the above circumstances, the impugned order is liable to be quashed and the Government of Uttaranchal is liable to be directed to reconsider the request of the petitioner in the light of the above observations is consultation with the State of Uttar Pradesh. Hence, the writ petition is allowed in the following terms:

(i) Annexure 1 order dated 03.12.2005 is quashed.

(ii) The Government of Uttaranchal is directed to reconsider the request of the petitioner for adjustment/ transfer on mutual agreement in compliance with the directions contained in

Annexure 2 judgment and in the light of the observations contained in this judgment.

iii Till the matter is reconsidered and fresh orders are passed by the Government of Uttaranchal, Annexure 10 order dated 21.07.2005 shall be kept in abeyance as far as the petitioner is concerned.

(P.C. Pant, J) **(Cyriac Joseph, C.J.)**
15.12.2005 **15.12.2005**

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